

MARICOPA COUNTY FLOOD CONTROL DISTRICT BOARD OF DIRECTORS MINUTE BOOK

**FORMAL SESSION
February 7, 2007**

The Board of Directors of the Flood Control District of Maricopa County, Phoenix, Arizona, convened in Formal Session at 9:00 a.m., February 7, 2007, in the Board of Supervisors' Auditorium, 205 W. Jefferson, Phoenix, Arizona, with the following members present: Andrew Kunasek, Vice Chairman, District 3 (Acting Chairman for this meeting); Don Stapley, District 2, and Max W. Wilson, District 4. Absent: Fulton Brock, Chairman, District 1 and Mary Rose Wilcox, District 5. Also present: Fran McCarroll, Clerk of the Board; Liz Evans, Minutes Coordinator; David Smith, County Manager; Victoria Mangiapane, Deputy County Attorney. Votes of the Members will be recorded as follows: aye-nay-absent-abstain.

MINUTES

Motion was made by Director Stapley, seconded by Director Wilson, and unanimously carried (3-0-2) to approve the minutes of the meeting held on October 4, 2006 and October 18, 2006.

PERSONNEL AGENDA

Motion was made by Director Stapley, seconded by Director Wilson, and unanimously carried (3-0-2) to approve the Flood Control District Personnel Agenda (Exhibit C). Exhibit C will be found at the end of this set of minutes.

EASEMENTS AND RIGHT-OF-WAY ACQUISITION DOCUMENTS

Motion was made by Director Stapley, seconded by Director Wilson, and unanimously carried (3-0-2) to approve easements and right-of-way acquisition documents, appraisal and relocation assistance services contracts under \$5,000 per Resolution FCD 87-12; Escrow Instructions per Resolution FCD 87-13; Payment of Tax Notices per Resolution FCD 97-07; License Procedures and Fee Schedules per Resolution FCD2002R002; and disposal of easements, excess real property and fixtures under \$250,000 documents per FCD 1999R016 for Flood Control purposes. (ADM1910)

Wickenburg Downtown Flooding Hazard Mitigation (Per Resolution FCD 2005R008)

Item FA027.014, Permanent Channel Easement and Agreement for Flood Control Purposes from Harry E. Stewart and Shirley M. Stewart to the Flood Control District of Maricopa County for the sum of \$500.00

Item FA027.014-1, Temporary Construction Easement and Agreement for Flood Control Purposes from Harry E. Stewart and Shirley M. Stewart to the Flood Control District of Maricopa County for the sum of \$1,000.00

Item FA027.014 and FA027.014-1, Purchase Agreement and Escrow Instructions.

Item FA027.015, Permanent Channel Easement and Agreement for Flood Control Purposes from Phillip W. Hershkowitz and Sarah I. Hershkowitz to the Flood Control District of Maricopa County for the sum of \$879.00

Item FA027.015-1, Temporary Construction Easement and Agreement for Flood Control Purposes from Phillip W. Hershkowitz and Sarah I. Hershkowitz to the Flood Control District of Maricopa County for the sum of \$1,000.00

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Item FA027.015 and FA027.015-1, Purchase Agreement and Escrow Instructions.

Item FA027.021, Permanent Channel Easement and Agreement for Flood Control Purposes from Richard Paul Gross and David Carl Gross to the Flood Control District of Maricopa County for the sum of \$6,400.00

Item FA027.021, Purchase Agreement and Escrow Instructions.

McDowell Road Basin and Storm Drain (Per Resolution FCD 2002R008)

Item FA028.008, Permanent Storm Drain Easement and Agreement for Flood Control Purposes from Lonnie Dean Antwiler and Michael Robin Antwiler for the sum of \$1,575.00.

Item FA028.008, Purchase Agreement and Escrow Instructions.

Item FA028.010, Permanent Storm Drain Easement and Agreement for Flood Control Purposes from Thunder Mountain Improvement Association, an Arizona corporation for the sum of \$5,305.00.

Item FA028.010, Purchase Agreement and Escrow.

Property Management - Agua Fria River (Per Resolution FCD 1999R016)

Item A-12033 & 12033-3, Waterline Easement from the Flood Control District of Maricopa County to the City of Avondale for the sum of \$20,966.00.

Property Management - Laveen Area Conveyance Channel (Per Resolution FCD 1999R016)

Item A001.005, Drainage Easement from the Flood Control District of Maricopa County to Rogers Ranch Homeowner's Association for the sum of \$11,609.00.

Item A001.013, Drainage Easement from the Flood Control District of Maricopa County to Laveen Crossing Master Homeowners Association for the sum of \$5,310.00.

Item A001.014, Drainage Easement from the Flood Control District of Maricopa County to Weingarten Nostat, Inc. for the sum of \$6,703.00.

PUBLIC HEARING - ADOPTION OF THE ENFORCEMENT RULES

Item: This was the time scheduled for a public hearing to solicit public comments and consider the adoption of the proposed "Enforcement Rules for the Flood Control District of Maricopa County." In accordance with A.R.S., Sections 48-3613, 48-3614, 48-3615, 48-3622, and Section 48-3626 the Flood Control District Board of Directors are directed to adopt and enforce floodplain regulations consistent with criteria adopted by the Director of the Arizona Department of Water Resources and rules and bylaws for its orderly operation. The Arizona Revised Statutes also directs the Flood Control District of Maricopa County to provide floodplain management and enforcement for 12 communities and all unincorporated areas within Maricopa County. As specified in A.R.S. §48-3609, the district is requesting the Board of Directors to set a hearing time and approve the district to publish the date, time and place of the public hearing at least 30 days prior to the public hearing taking place.

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No member of the public came forward to comment on this item.

Tim Phillips, Chief Engineer and General Manager for the Flood Control District, pointed out that the last sentence in this agenda item seemed to be saying that the purpose of this item was to schedule a hearing date. The Clerk of the Board clarified that, while there may have been an error in the way that sentence was written, the January 2nd meeting set the hearing date for today.

Motion was made by Director Stapley, seconded by Director Wilson, and unanimously carried (3-0-2) to adopt the "Enforcement Rules for the Flood Control District of Maricopa County." (C6907035600) (ADM1913)

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY ENFORCEMENT RULES

PURPOSE

It is the purpose of these rules to implement the violation, enforcement and penalty provisions statutorily authorized pursuant to A.R.S. §§48-3603(D), 48-3609, 48-3613, 48-3614, 48-3615, 48-3615.01, 48-3622, 48-3626 and FCD Resolution No. 2006R016.

These rules will:

1. Identify what constitutes a violation of the flood control statutes and regulations,
2. Authorize and specify the enforcement procedures, and
3. Establish the penalties and remedies available for violations.

DEFINITIONS

In these rules, unless the context otherwise requires:

1. **"Administrative Hearing"** means a proceeding wherein evidence is taken for the purpose of determining an issue of fact and reaching a decision on the basis of that evidence. This proceeding takes place outside the judicial process and before a hearing officer who has the authority to conduct such hearings.
2. **"Administrative Search Warrant"** means an order in writing issued in the name of the State of Arizona, signed by a magistrate, directed to a peace officer, commanding him to accompany an appropriate official to search and inspect property in the interest of the public health, safety or welfare as part of an inspection program authorized by law.
3. **"Alleged Violator"** means any person as herein defined who violates any flood control statute, regulation, ordinance, rule or terms and stipulations of a floodplain permit.
4. **"Cease and Desist Order"** means an order from the Flood Control District prohibiting the person or entity to which it is directed from undertaking or continuing a particular activity or course of conduct.
5. **"Development"** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling,

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grading, paving, excavation or drilling operations or storage of materials and equipment located within the Special Flood Hazard Area.

6. **"District"** means a flood control district organized pursuant to ARS 48-3602(A).
7. **"Flood"** or **"floodwaters"** means a temporary rise in water level including groundwater or overflow of water onto lands not normally covered by water.
8. **"Floodplain"** means the area, adjoining the channel of a watercourse, susceptible to inundation by a base flood including areas where drainage is or may be restricted by man made structures that have been or may be covered partially or wholly by flood water from the one hundred-year flood.
9. **"Floodplain regulations"** means the codes, ordinances and other regulations adopted pursuant to the authority granted in A.R.S. § 48-3603 through 48-3628 relating to the use of land and construction within a delineated floodplain and floodway or other special flood hazard areas.
10. **"Floodway"** means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.
11. **"Hearing Officer"** means the individual(s) appointed by the Board of Directors of the Flood Control District of Maricopa County to hear and decide all civil proceedings established by any ordinance, regulation, rule or provision enacted or adopted by the Board of Directors.
12. **"One hundred-year flood"** or **"base flood"** means a flood that has a one per cent chance of being equaled or exceeded in a one year period, based on the criteria established by the director of water resources.
13. **"Other Designated Representative"** means a person over eighteen years of age, other than an attorney, authorized in writing by the owner or alleged violator to represent them in a public hearing before the Hearing Officer. The written authorization shall be in a form sufficient to satisfy the Hearing Officer that the person has in fact been authorized to act in the owner or alleged violator's behalf, and that they understand and agree to be bound by actions taken by the designated representative in proceedings before the Hearing Officer.
14. **"Peace officers"** means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, peace officers who are appointed by a multi-county water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, and police officers who are appointed by the governing body of a public airport pursuant to section 28-8426

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and who have received a certificate from the Arizona peace officer standards and training board.

15. **"Person"** means an individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.
16. **"Regulatory flood elevation"** means the elevation which is one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.
17. **"Remediation"** means returning a site that has been disturbed to an acceptable condition of flow conveyance, erosion control, and environmental compliance by actions of the property owner or their representative.
18. **"Watercourse"** means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

VIOLATIONS

- A. It is unlawful for any person to engage in any development to divert, retard, or obstruct the flow of waters in any watercourse without securing the written authorization from the Board of Directors of the Flood Control District, the Floodplain Review Board or the Floodplain Administrator, as required by the Floodplain Regulations for Maricopa County in force at the time of the violation.
- B. It is unlawful for any person to violate any other statutes, regulations, ordinances or rules governing floodplains including (1) the Floodplain Regulations for Maricopa County, (2) the Drainage Policies and Procedures for Maricopa County, Arizona, and (3) any other rules or ordinances adopted pursuant to authority granted to the Flood Control District under state statute.
- C. It is unlawful for any person to engage in development in the floodplain without a Floodplain Use Permit or to engage in any development that is not in compliance with an active Floodplain Use Permit.
- D. It is unlawful for any person, without written authorization from the Board of the Flood Control District, to damage or interfere with a facility that is owned, operated or otherwise under the jurisdiction of the Flood Control District.

Commission of any of these unlawful acts constitutes a violation.

ENFORCEMENT

I. Scope of Inspections

A. Routine Inspections

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The Chief Engineer or his designee may have reasonable access for routine inspections during regular business hours. In case of emergency, the District may inspect at any time. A District representative shall attempt to give forty-eight hours advance notice of the inspection and the owner his designee or the alleged violator may accompany the District on the inspection. In addition, the District may include the right of inspection at any time and without notice as part of the floodplain permit authorization. A report of the inspection shall be made and kept in the records of the District with a copy sent to the owner of the property or the alleged violator within thirty (30) days after the inspection.

B. Violation Inspection

1. If a report of a violation is received, the violation shall be investigated and inspected as necessary. If a District representative encounters damage or interference with a District facility, he shall report it to the District. The Chief Engineer or his designee shall review all alleged violations of the regulations, ordinances, rules or guidelines of the District.
2. If an inspection is required to ascertain if a violation is occurring of any flood control statute, regulation, ordinance or rule and access is denied, the Chief Engineer shall apply for and obtain an administrative search warrant. The search warrant shall be served by a peace officer. A report of an inspection made pursuant to this subsection shall be prepared and kept in the records of the District. A copy of this report shall be mailed or otherwise delivered to the owner of the property or alleged violator within fifteen (15) days after the inspection.

C. Reinspection

Reinspection shall be conducted within thirty (30) days after the date set forth in the notice of violation to verify the correction of an alleged violation, or for a cease and desist order, within ten (10) days after the notice of violation is served. If the alleged violation has not been corrected at the time of the reinspection, the District representative may, in writing, at their discretion, if they are convinced that a reasonable attempt is being made to correct the alleged violations, grant an extension of time, not to exceed sixty (60) calendars days in two incremental periods of thirty (30) days each, for completion of the corrections of the alleged violations as set forth in the notice. The first extension shall commence at the time of reinspection with the second extension, if applicable, beginning at the termination of the first extension.

D. Records Inspection

At all times, the inspection may include viewing the set of development plans bearing the approval of the District required to be kept on site pursuant to the Floodplain Regulations. No other records may be inspected nor the interior of any building.

E. Inspections for Unauthorized Damage and Interference with District Facilities

A District representative who encounters unauthorized damage or interference with District facilities shall document in a report such damage or interference which shall be kept in the records of the District.

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II. Notice of Violation

A. Contents of Notice of Violation

1. The notice of violation shall contain a specific description of the nature of the violation, where the violation is occurring and a specific description of the facts constituting the alleged violation.
2. The notice of violation shall identify the provisions of the applicable statutes, regulations, ordinances, rules or terms of the applicable permit which have been violated.
3. The notice of violation shall identify the actions required to correct the violation and order to cease and desist any ongoing activity that is not in compliance with the applicable statutes, regulations, ordinances, rules or terms of the applicable permit.
4. The notice of violation shall set forth a date by which the violation must be corrected.
5. A cease and desist order is effective on the date it is served.
6. The notice shall contain the date, time and place where the person responding may appear to show cause why the notice of violation should be vacated.
7. The notice shall also contain a return form that the recipient can use to either admit the allegations or request a hearing in front of a hearing officer.

B. Service of Notice of Violation

If a District representative determines that a violation is occurring on the subject property, he shall serve, or cause to be served, a notice of violation to the property owner and the alleged violator. If a District representative determines that a District facility has been damaged or is being interfered with, he shall serve, or cause to be served, a notice of violation to the alleged violator. For the purposes of this section, service shall be deemed complete upon:

1. Personal service to the recipient;
2. Receipt of the return receipt when mailing notice of violation to recipient, postage pre-paid, for certified mail, return receipt requested;
3. Expiration of ten (10) business days from the date of posting the notice of violation on the property.

Where the recipient is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the county. Where the recipient is a corporate or other entity, the address for the notice shall be the address of the statutory agent, or if none, the address from the most recent records of the Corporation Commission or Secretary of State. Service by posting of the notice of violation may only be used where the owner, operator or alleged violator cannot be located after reasonable efforts by the District.

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III. Responses to the Notice of Violation

Upon receipt of a notice of violation a person may:

1. Admit the allegations by appearing on the date and time indicated in the notice of violation to enter such admission.
2. Admit the allegations by mailing or delivering to the District the form accompanying the notice of violation indicating in writing the admission to the allegations. This admission shall include an agreement to acquire any permits as necessary, an agreement to remedy the violation in the manner requested by the District, or an agreement to remedy the damage or interference in accordance with terms determined by the District.
3. Deny the allegations by appearing at the date and time indicated in the notice of violation to enter such denial. This shall be deemed to be a request for a hearing unless the District has since withdrawn the notice of violation.
4. Deny the allegations by mailing or delivering to the District a form accompanying the notice of violation indicating in writing and signed by the owner or alleged violator a request for a hearing.
5. No response or appearance by the owner or alleged violator or anyone on their behalf will be construed as a request for a hearing.

IV. Hearing Requests

1. A request for a hearing shall be forwarded to a Hearing Officer. The Hearing Officer shall be appointed by the Flood Control District Board of Directors and may be an employee of the District.
2. The Hearing Officer shall set a date, time and place for a hearing. The Hearing Officer shall cause notice of the hearing to be served on the owner or alleged violator and the Floodplain Administrator.
3. Notice of the hearing and a copy of the notice of violation shall be personally served on the owner or alleged violator at least ten (10) days prior to the hearing. Service of the notice shall be affected by delivering a copy of the hearing notice and the notice of violation to an individual personally or by leaving copies thereof at that individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein. Service of the notice shall be affected by delivering a copy of the hearing notice and notice of violation to a corporate or other entity by leaving copies thereof with the entity's statutory agent or, if none, at the entity's most recent address as reflected in the records of the Corporation Commission or Secretary of State.
6. If the Hearing Officer is unable to personally serve the notice, the notice may be served by depositing the notice and a copy of the notice of violation in the post office, postage prepaid, to be sent to the person to be served by any form of mail requiring a signed and returned receipt. A notice served by this alternative method shall be served at least thirty (30) days prior to the hearing.

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V. Hearing Procedures

Any hearing held pursuant to this section shall be open to the public. Proceedings shall be audiotaped. A record of the proceedings may be made by a court reporter at the owner or alleged violator's expense if they so request.

A. Parties

1. The owner or alleged violator and the District representative must appear before the Hearing Officer on the date, time and place designated for adjudication of the alleged violation.
2. An owner or alleged violator may be represented by an attorney or other designated representative. The District may be represented by the County Attorney.
3. If any party desires to be represented by counsel or a designated representative at the hearing, that party must provide written notice of such representation to the Hearing Officer and the opposing party prior to the hearing. The party so desiring such representation by counsel must deliver to the District and the opposing party the notice of representation a minimum of 24 hours prior to the scheduled date and time of the hearing. Representation by counsel may not be permitted at the hearing unless proof of notification is produced at the hearing.

B. Discovery

1. Pre-public hearing discovery shall not be permitted (i.e., no depositions, interrogatories, etc., will be allowed prior to the actual public hearing).
2. Immediately prior to the public hearing, both parties shall produce for inspection by the opposing party any prepared exhibits and written, taped or recorded statements of any witness which may be offered at the public hearing. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

C. Rules of Procedure

1. The Arizona Rules of Evidence shall not apply. Evidence is subject to the decision of the Hearing Officer whether it is relevant and material. The County Attorney may present evidence on behalf of the District. This is not to be construed as abrogating any statutory provision relating to privileged communications.
2. If the alleged violator does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the alleged violator in default, thereby admitting all relevant facts set forth in the notice of violation, find for the District and submit his findings, determination and recommendation to the Chief Engineer within thirty (30) days of the hearing.

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3. If the District representative does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the District in default, thereby admitting that no violation exists, and submit his findings, determination and recommendation to the Chief Engineer within thirty (30) days of the hearing.
4. Decisions of the Hearing Officer, the Chief Engineer or the Board of Hearing Review shall be available to any party to the hearing.

D. Conduct of the Hearing

1. The Hearing Officer shall call the case and briefly describe the procedures to be followed. The Hearing Officer may question any or all witnesses or parties to the action. No person may be examined at a hearing except by the Hearing Officer, the defendant or his attorney or designated representative, and the District representative or his attorney.
2. The Hearing Officer shall give oaths and all testimony shall be given under oath or affirmation.
3. All witnesses for the District's case-in-chief, other than the owner or alleged violator, shall be required to testify prior to the owner or alleged violator being required to testify or to produce evidence. However, a witness not called in the District's case-in-chief may be called in rebuttal to testify to an issue raised by the owner or alleged violator.
4. The parties shall stipulate to all facts not in dispute.
5. The order of proceedings shall be as follows:
 - a. Testimony of District's witnesses
 - b. Testimony of owner or alleged violator's witnesses
 - c. Testimony of District's rebuttal witnesses, if any
 - d. Testimony of owner or alleged violator's rebuttal witnesses, if any
 - e. Argument of parties or their counsel or designated representatives
6. At the discretion of the Hearing Officer, cross examination shall be limited to matters relevant to witnesses' testimony.

E. Decision and Order

1. The Hearing Officer shall submit written findings and recommendations for the appropriate measures to be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of any civil penalties to the Chief Engineer and the owner or alleged violator within thirty (30) days after the date of the hearing.
2. The Chief Engineer shall issue a final decision and order. The final decision shall be in the form of findings of fact and conclusions why those facts constitute violations of statutes, regulations, ordinances or rules. The final order shall be in the form of measures required to abate or ameliorate any harm or damage resulting from the violation, requirements for permits and the imposition of civil penalties. The final decision

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and order shall be personally served on the parties to this action and is effective upon service.

F. Right to Appeal

Either party to a final decision and order of the Chief Engineer may request a review of the final decision and order by the Board of Hearing Review. A request for review shall be delivered to the Clerk of the Board of Directors within fifteen (15) days after the effective date of the final decision and order.

VI. Board of Hearing Review Procedures

- A. The review shall be limited to the record of proceedings before the Hearing Officer and no new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted at the hearing, a copy of the audiotape of the hearing and a copy of the Chief Engineer's final decision and order. If the Board of Hearing Review determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.
- B. Notice of appeal shall be given to the Chief Engineer not more than ten (10) working days after the final decision and order has been served on the parties. The notice shall set forth all relevant facts, the judgment being appealed and the reasons therefore.
- C. Upon receipt of the notice of appeal, the Chief Engineer shall, within thirty (30) calendar days, prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the appeal to be heard by the Board.
- D. The clerk of the Board of Hearing Review shall notify all parties of the date, time and place of the appeal hearing by certified mail to the last known address of the parties at least ten (10) working days prior to the date of the hearing.
- E. The Chairperson of the Board of Hearing Review shall preside at all appeal hearings and shall decide on all questions pertaining to procedure.
- F. Each party shall be allowed five minutes to present oral arguments. Time limits may be extended at the discretion of the Chairperson.
- G. All members of the Board may question all parties appearing before them.
- H. The decision to uphold or deny the Chief Engineer's final decision and order shall be decided upon by motion and a majority vote of the members of the Board of Hearing Review.
- I. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. § 12-901 et seq.

PENALTIES

Criminal Penalties

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The penalty for a criminal violation of the statutes, regulations, ordinances or rules of the District is a Class 2 Misdemeanor. A Class 2 Misdemeanor is punishable as follows:

For an Individual: A fine not in excess of \$750.
Jail time not to exceed four (4) months.
For an Enterprise: A fine not in excess of \$10,000.

A PERSON OR ENTITY SHALL BE CHARGED WITH A SEPARATE VIOLATION FOR EACH AND EVERY DAY DURING ANY PORTION OF WHICH ANY VIOLATION OF ANY PROVISION OF THE STATUTES, REGULATIONS, ORDINANCES OR RULES IS COMMITTED, CONTINUED OR PERMITTED BY SUCH PERSON.

Civil Penalties

The civil penalty for violation of any statute, regulation, ordinance or rule is a fine not to exceed that which is chargeable for a Class 2 Misdemeanor. That fine is as follows:

For an individual: A fine not in excess of \$750.
For an Enterprise: A fine not in excess of \$10,000.

A PERSON OR ENTITY SHALL BE CHARGED WITH A SEPARATE VIOLATION FOR EACH AND EVERY DAY DURING ANY PORTION OF WHICH ANY VIOLATION OF ANY PROVISION OF THE STATUTES, REGULATIONS, ORDINANCES OR RULES IS COMMITTED, CONTINUED OR PERMITTED BY SUCH PERSON.

Strict Liability

In addition to any criminal or civil penalties available, a person who damages or interferes with a facility owned, operated or otherwise under the jurisdiction of the District without written authorization from the District is strictly liable for both of the following:

- A. Any actual damages to persons, property or real property such as structures, landscaping, etc. that is caused by the damage or interference, and
- B. Payment of costs to the District for remediating the damage or interference.

BULLARD WASH CHANNEL IMPROVEMENTS PROJECT

Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to approve Intergovernmental Agreement (IGA) FCD 2006A010 between the Flood Control District of Maricopa County and the City of Goodyear for cost sharing, rights-of-way acquisition, utility relocation, construction, construction management, operation and maintenance of the Bullard Wash Channel Improvements Project, Interstate 10 to McDowell Road, #470 (Project). The project is estimated to cost \$6,000,000, for which the IGA provides for a 50% district and 50% city cost share. (C6907032200)

DAM SAFETY PROGRAM

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Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to adopt Resolution FCD 2006R014 authorizing and directing the Chief Engineer and General Manager of the Flood Control District of Maricopa County to perform Dam Safety Program work inclusive of: Recurrent Dam Safety Activities, Structures Assessment and Dam Rehabilitation planning and pre-design as identified in Exhibit A of the Resolution; to enter into negotiations for technical service contracts, for planning and engineering contracts and to award those contracts, subject to the ratification and approval of the Board of Directors and subject to funding to be approved in the district's FY 2007-08 Budget. This Resolution further authorizes the district to negotiate with landowners and/or appropriate agencies to obtain all necessary rights-of-entry, for the purpose of performing dam safety investigations and dam safety monitoring activities, and for the purpose of obtaining topographic, geologic, hydrographic, and environmental data for the Dam Safety Program work. (C6907039600) (ADM1900)

**RESOLUTION FCD2006R014
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
FISCAL YEAR 2007-08 DAM SAFETY PROGRAM**

WHEREAS, the Flood Control District of Maricopa County (District) was established in accordance with provisions of Arizona Revised Statutes Title 48 for the purpose of acquiring, constructing, maintaining, and operating flood control facilities to control waters of rivers and streams, and other surface waters to prevent the flooding of property and the endangering of lives of people; and

WHEREAS, the District operates and maintains 22 flood control dams, which provide highly beneficial flood protection for significant portions of Maricopa County; and

WHEREAS, the District is mandated by state and federal law to comply with dam safety regulations and the District is the primary agency responsible for the safe and proper operation of its 22 flood control dams; and

WHEREAS, the District has determined a need to fully continue and implement a Dam Safety Program inclusive of primary components of: Recurrent Dam Safety Activities, Structures Assessment and Dam Rehabilitation in order to meet the District's dam safety responsibilities; and

WHEREAS, IGA FCD2004A018 authorized the District to participate in the cooperative development and cost sharing of the City of Phoenix Dam Safety Program; and

WHEREAS, the District has identified the Dam Safety Program, with components of Recurrent Dam Safety Activities, Structures Assessment and Dam Rehabilitation to be continued or initiated during Fiscal Year 2007-08, as shown on Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED that the Chief Engineer and General Manager of the District is authorized and directed to include funding in the amount of \$3,325,000 in the District's Fiscal Year 2007-08 Budget subject to available funding; negotiate technical service contracts for the Dam Safety Program work inclusive of: Recurrent Dam Safety Activities, Structures Assessment and Dam Rehabilitation contracts as shown on Exhibit "A", made a part hereof; and to award those contracts, subject to the ratification and approval of the Board of Directors; and,

BE IT FURTHER RESOLVED that the Chief Engineer and General Manager of the District is authorized and directed to negotiate with landowners and/or appropriate agencies to obtain all necessary rights-of-entry, for the purpose of performing dam safety investigation and dam safety monitoring activities, and for

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the purpose of obtaining topographic, geologic, hydrographic, and environmental data for the Dam Safety Program work.

Dated this 7th day of February 2007

/s/ Andrew Kunasek, Acting Chairman of the Board

ATTEST:

/s/ Fran McCarroll, Clerk of the Board

Exhibit A

	FY'07/08	FY'08/09	FY'09/10	FY'10/11	FY'11/12
	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
DAM SAFETY PROGRAM					
RECURRENT DAM SAFETY ACTIVITIES					
Dam Survey Contracts	150	150	150	150	150
Emergency Action Plan Contracts	300	300	300	300	300
Fissure & Subsidence Monitoring	120	120	100	100	100
Outlet Inspection Contracts	20	20	0	0	0
Sub-total	590	590	550	550	550
STRUCTURES ASSESSMENT & REPAIRS					
PVR Dams	250				
Saddleback FRS	250				
City of Phoenix Dam Safety Program	260	270	0		
Assessments and Repairs Other Dams	250	500	500	500	500
Sub-total	1,010	770	500	500	500
DAM REHABILITATION - Planning & Pre-Design Contracts					
White Tanks FRS#4	575				
Buckeye FRS#1	250				
McMicken Dam	900				
Pinal County Dams (PVR)		1,000	1,000	1,000	
Sub-total	1,725	1,000	1,000	1,000	0
Total All Contracts	3,325	2,360	2,050	2,050	1,050

GLENDALE/PEORIA AREA DRAINAGE MASTER PLAN UPDATE

Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to approve Intergovernmental Agreement (IGA) FCD2006A007 between the Flood Control District of Maricopa County and the City of Peoria to define the responsibilities of the district and Peoria for the cost-sharing, planning, analysis, and preparation of the Glendale/Peoria Area Drainage Master Plan Update (ADMPU) Northwest Region Update (Study). The estimated cost of the Study is \$300,000. The district and Peoria will cost share 50/50 with Peoria's share not-to-exceed \$150,000. (C6907040200)

ADJUSTMENT TO CAPITAL IMPROVEMENT PROGRAM

Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to approve an adjustment to the current FY 2006-07 Capital Improvement Program (CIP) expenditure budget of the Flood Control District of Maricopa County, Department (690), Fund (990). The adjustment

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consists of increasing funding for Project 121 – East Maricopa Floodway by \$415,000 and reducing the funding for Project 450 – Glendale / Peoria ADMP by \$415,000. The net affect on the FY 2006-07 CIP budget is zero. The adjustment is required due to the need for greater than anticipated excavation, material disposal, rip rap construction and seeding than was anticipated in the original plans. (C6907041800) (ADM1900-003)

ADOPTION OF THE DRAINAGE POLICIES AND STANDARDS MANUAL

Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to approve Resolution FCD2007R001, which authorizes the adoption of the Drainage Policies and Standards Manual for Maricopa County (DPSMC) and authorizes and directs the Chief Engineer and General Manager of the Flood Control District to distribute the DPSMC and recommend its use by the citizens of Maricopa County. In accordance with the A.R.S., Title 48, Chapter 21 which requires the Board of Directors of the Flood Control District to identify flood problems, plan for the construction of facilities, review and regulate proposed developments, issue permits for development within floodplain areas, and promote and protect the health, peace, safety, comfort, convenience and general welfare of the residents within the jurisdictional area of Maricopa County, and to minimize public and private losses due to flood conditions. (Manual is on file in the Clerk of the Board's office.) (C6907043600) (ADM1915)

RESOLUTION FCD 2007R001

ADOPTION OF A DRAINAGE POLICIES AND STANDARDS MANUAL FOR MARICOPA COUNTY

WHEREAS, Arizona Revised Statutes Title 48, Chapter 21 requires the Board of Directors of the Flood Control District (District) to identify flood problems, plan for the construction of facilities, review and regulate proposed developments, issue permits for development within floodprone areas, and promote and protect the health, peace, safety, comfort, convenience and general welfare of the residents within the jurisdictional area of Maricopa County, and to minimize public and private losses due to flood conditions; and,

WHEREAS, the District and Maricopa County prepared the new Drainage Policies and Standards for Maricopa County, Arizona to provide guidance and detail on implementation of the Flood Control District of Maricopa County (District) Floodplain Regulations and the Maricopa County (County) Drainage Regulations; and

WHEREAS, it is intended that the guidance and detail in the document will assist those preparing drainage studies, plans, design reports, construction drawings and accompanying drainage/floodplain use permit applications to be in accordance with the philosophies, policies and minimum standards contained in the Drainage Policies and Standards for Maricopa County, Arizona and to meet the minimum requirements of the governing regulations; and

WHEREAS, Use of the Drainage Policies and Standards for Maricopa County, Arizona will expedite the review, approval and permitting processes and help meet the missions of both the District and Maricopa County to provide permit reviews in the most technically correct and economical way; and,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Flood Control District of Maricopa County hereby adopts the Drainage Policies and Standards for Maricopa County, Arizona and recommends its use by all parties submitting drainage and floodplain reports, plans and studies to the District for review and approval; and,

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BE IT FURTHER RESOLVED, that the Chief Engineer and General Manager of the District is authorized and directed to distribute the Drainage Policies and Standards for Maricopa County, Arizona and recommend its use by the citizens of Maricopa County.

Dated this 7th day of February 2007

/s/ Andrew Kunasek, Acting Chairman of the Board

ATTEST:

/s/ Fran McCarroll, Clerk of the Board

ADJUSTMENTS TO FLOOD CONTROL DISTRICT CAPITAL IMPROVEMENT PROGRAM

Motion was made by Director Wilson, seconded by Director Stapley, and unanimously carried (3-0-2) to approve the following adjustments to Flood Control District of Maricopa County FY 2006-07 Operating, Capital Improvement Program and Elimination fund budgets:

- a) Decrease the Flood Control District, (690), Flood Control Fund (991), revenue budget by \$19,429,000, resulting in a revised total revenue budget of \$90,841,585
- b) Decrease the Flood Control District, (690), Flood Control Fund (991), operating expenditure budget by \$19,939,794 (19,528,610 annualized), which includes a reduction of the Transfer Out to the Flood Control Capital Projects fund of \$19,296,962 and a reduction of other expenditures of \$642,832, resulting in a revised total operating expenditure budget of \$92,031,077 (92,442,261 annualized).
- c) Decrease the Flood Control District (690), Flood Control Capital Projects Fund (990), revenue budget by \$19,296,962 (Transfers In), resulting in a revised total revenue budget of \$57,886,461, with corresponding adjustments of \$19,296,962 to revenue and expenditures in the Flood Control District Eliminations Fund (Dept. 690, Fund 900).
- d) Decrease the Flood Control District, (690), Flood Control Capital Projects Fund (990), expenditure budget by \$11,000,000, resulting in a revised total CIP expenditure budget of \$60,000,000. The project expenditure adjustments in the Flood Control Capital Projects Fund (990), resulting in the above requested \$11,000,000 total adjustment, are as follows: (C6907045800) (ADM1900-003)

Project No.	Name	Adjustments
F117	S. Phoenix Drainage Improvements	increase by \$44,000
F120	Paradise Valley, Scottsdale, Phoenix	reduce by \$469,000
F121	East Mesa Floodway	increase by \$193,000
F201	White Tanks FRS # 4	reduce by \$200,000
F343	Wickenburg	reduce by \$366,000
F344	Wittmann	reduce by \$5,000
F345	Aguila	reduce by \$133,000
F346	Hassayampa	increase by \$2,000
F371	Upper New River ADMP	increase by \$3,000
F401	Agua Fria River Flowage Easements	reduce by \$10,000
F420	Spookhill Watershed Area	reduce by \$123,000
F442	Southeast Mesa	reduce by \$231,000
F450	Glendale / Peoria	reduce by \$1,597,000

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Project No.	Name	Adjustments
F470	White Tanks / Agua Fria	increase by \$830,000
F480	Queen Creek	reduce by \$4,440,000
F490	Gilbert / Chandler	reduce by \$100,000
F491	Higley Area	increase by \$4,000
F565	Durango	reduce by \$889,000
F580	ACDC Area	increase by \$58,000
F590	Scatter Wash Channel	reduce by \$712,000
F620	Maryvale	reduce by \$183,000
F625	Metro Area	reduce by \$1,712,000
FCPR	Project Reserves (Flood)	reduce by \$964,000

MEETING ADJOURNED

There being no further business to come before the Board, the meeting was adjourned.

/s/ Andrew Kunasek, Acting Chairman of the Board

ATTEST:

/s/ Fran McCarroll, Clerk of the Board